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April 2018

Supreme Court Rejects Practice of Construing Fair Labor Standards Act Exemptions Narrowly

On April 2, 2018, in a 5-4 decision, the United States Supreme Court held that automobile service advisors are not entitled to overtime pay. Although the precise holding is of limited application because few companies outside car dealerships employ individuals as automobile service advisors, the Supreme Court's analysis will have wide-reaching application. Departing from years of contrary thinking, the decision definitively states there is no basis for construing exemptions to the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) narrowly. This is a major victory for employers, who have long faced the frequently-intoned argument that courts must construe the FLSA's exemptions narrowly against them.

Encino Motorcars, LLC v. Hector Navarro, et al., 584 U.S. _____ (2018) stems from a collective action brought on behalf employees who worked as service advisors at Encino Motorcars (Encino). The employees' role was to greet car owners upon arrival in the service area of the dealership, listen to customers' concerns about their cars, evaluate the repair and maintenance needs of the cars, suggest services, write up estimates, and follow up with the customer as the dealership performed repair services. Encino did not pay service advisors overtime wages because it classified them as exempt pursuant to a FLSA exemption for "salesman, partsman, or mechanics primarily engaged in selling or servicing automobiles."

April 2 marks the second time the Supreme Court weighed in on the case. The district court originally dismissed it after concluding automobile service advisors fell within the exemption. Though consistent with the interpretation of the exemption offered by the Fourth and Fifth Circuits, the district court's interpretation conflicted with a 2011 rule issued by the U.S. Department of Labor (DOL), which interpreted "salesman" to exclude automobile service advisors—an about-face from the DOL's earlier position. The district court recognized the conflict but found that the DOL interpretation was "unreasonable," affording it no deference or controlling weight.

On appeal, the Ninth Circuit reversed, relying on the 2011 regulation issued by the DOL. According to the Ninth Circuit, the DOL's interpretation of the exemption was in fact reasonable, and under this interpretation, the exemption clearly did not include automobile service advisors. Encino appealed to the Supreme Court, which granted certiorari. In *Encino Motorcars, LLC v. Navarro*, 579 U.S. _____ (2016) (Encino I), the Supreme Court held that the DOL's 2011 rule lacked an adequate explanation for its change in position and therefore was not entitled to deference or controlling weight. The Encino I Court remanded the case to the Ninth Circuit with instructions to interpret the FLSA exemption without reference to the DOL's interpretation.

On rehearing, the Ninth Circuit reexamined the case in light of the Supreme Court's instructions. Even without reference to the DOL's interpretation of the FLSA overtime exemption, the Ninth Circuit again found that the exemption did not include automobile service advisors based on the "ordinary meaning" of the exemption's words and "the rule that we must interpret exemptions narrowly[.]" 845 F.3d 925, 936 (9th Cir. 2017). The Supreme Court granted certiorari for a second time and heard oral argument in January.

On April 2, the Supreme Court again overturned the Ninth Circuit, holding that the best reading of the statute rendered automobile service advisors salesman; accordingly, they cannot pursue their wage and hour lawsuit against Encino because they are not eligible for overtime pay.

In so holding, and most significantly, the majority expressly rejected the principle that courts should construe FLSA exemptions narrowly. It explained, "The narrow-construction principle relies on the flawed premise that the FLSA 'pursues' its remedial purpose 'at all costs.'" 2018 WL 1568025 at *7 (internal citations omitted). The *Encino* Court reasoned that because the FLSA gives no indication that courts should construe its exemptions narrowly, courts have no basis for giving the exemptions anything other than a "fair (rather than a 'narrow')" reading. *Id.*

In dissent, Justice Ginsburg, joined by Justices Breyer, Sotomayor, and Kagan, opined that automobile service advisors "neither sell nor repair automobiles," and, as a result, they should remain within the FLSA's coverage. *Id.* at *8 (Ginsburg, J., dissenting). The dissent also disagreed with the majority's take on the narrow-construction rule, coloring it as a change that "unsettles more than half a century" of Supreme Court precedent. *Id.* at *12, n.2 (Ginsburg, J., dissenting).

Magnitude of the change aside, *Encino* is likely to be welcome news for employers. It answers the long-debated question of whether service advisors are exempt in the affirmative. Perhaps more importantly, though, by clearly and finally rejecting the narrow-construction principle, *Encino* may better position employers to defend their classification decisions across the board.

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